1092

FILE COPY

Supreme Court, U. S.
FILED
FEB 8 1973
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 72-1092

RONALD LEE CASSITY - - - - Petitioner

versus

THE UNITED STATES OF AMERICA - Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

DAVID KAPLAN
DON H. MAJOR
MULHALL, MAJOR & TURNER
310 W. Liberty St.,
Louisville, Kentucky 40202

Attorneys for Petitioner

WESTERFIELD-BONTE CO., INC., 619 W. KENTUCKY, LOUISVILLE, KY.

INDEX

PAGE

Opinion Below 1

Jurisdiction 2

Questions Presented for Review 2

Statute Involved 3

Statement of the Case 3– 4

Reasons for Granting the Writ 4– 8

Conclusion 8

Appendix A Opinion in the United States Court of Appeals for the Sixth Circuit 9–12

Appendix B—Statute 13–15

Appendix C—History of Title 18 U.S.C. sec. 922 16–21

TABLE OF CITATIONS

Cases:

PAGE

Pen-Ken Gas & Oil Corp. v. *Warfield Natural Gas Co.*, 137 F. 2d 871, at 881 8

Shreve v. *U. S.*, 103 F. 2d 796 7

U. S. v. *Bass*, 404 U. S. 336 ..... 2, 4–5

U. S. v. *Campos-Serano*, 404 U. S. 293 6

Wong Sun v. *United States*, 371 U. S. 471 7

Statutes:

18 U.S.C. §922 (a)(6) 2, 3, 4, 5

18 U.S.C. §922 (b) 5

Legislative History:

114 Cong. Rec. 30,568 (daily ed. Oct. 10, 1968) 6

IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

RONALD LEE CASSITY - - - - - *Petitioner*

v.

THE UNITED STATES OF AMERICA - - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Ronald Lee Cassity, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals has not been reported. A copy of the opinion is printed in Appendix A hereof, p. . There was no opinion in the District Court.

The judgment and opinion of the Court of Appeals, sought to be reviewed, was dated and entered on December 28, 1972.

Petitioner's Petition for Rehearing (filed on January 9, 1973).

JURISDICTION

It is believed that 28 U.S.C., §1254 (1), and Supreme Court Rule 19, Paragraph 1(b), confer jurisdiction upon the Supreme Court to review the judgment in this case by writ of certiorari.

QUESTIONS PRESENTED FOR REVIEW

1.) Whether or not 18 U.S.C. §922(a)(6) which makes it unlawful "for any person in connection with the Acquisition . . . of any firearm . . . to make any false . . . statement . . ." can be applied as to purely intrastate transactions in view of *United States* v. *Bass,* 404 U. S. 336, and the 10th Amendment of the United States Constitution.

2.) Whether or not the admission of evidence obtained as a result of an arrest which had been held invalid in a separate proceeding in another state after the trial concerned herein, and was objected to at the trial herein, was an abridgement of the Defendant's rights under the Fourth Amendment of the United States Constitution.

3.) Whether the Court of Appeals has denied the Defendant's Fifth Amendment right to confront the evidence against him by affirming the admitting of the testimony of an Alcohol, Tobacco and Firearms agent to prove a firearms dealer's license rather than requiring the United States to produce the license.

STATUTE INVOLVED

The Statute involved is:

18 U.S.C., Sec. 922(a)(6), which reads:

> "Sec. 922(a)(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter."

STATEMENT OF THE CASE

The Petitioner was indicted and tried in The United States District Court for the Western District of Kentucky and found guilty by a jury on March 28, 1972 of uttering a false statement in acquiring a firearm.

The firearm concerned in this action and the information on which the indictment was based had been obtained by the government while the Defendant was in custody for possessing such weapon in the Southern District of Indiana. On May 23, 1972 the United States District Court of the Southern District of Indiana ruled to suppress all evidence surrounding Defendant's arrest since the Defendant had been illegally arrested.

The proof showed that Defendant's attorney raised the question of no interstate nexus being proved but was overruled by the Trial Court Judge.

In proving its case in the trial court the United States proved an essential part of their case by having an Alcohol, Tobacco and Firearms dealer testify that the dealer was licensed rather than producing the license itself so that it could be cross-examined (TP, p. 67, line 12).

Also, the new evidence of the Indiana Judgment was presented to the District Court on a Motion for New Trial but the motion was overruled.

The questions involved in the construction of the federal statute, the impropriety of the testimony in lieu of the license and the question of the evidence being tainted were all properly raised by motions and objections to testimony in the trial court, and duly presented upon Appeal.

REASONS FOR GRANTING THE WRIT

1.) The opinion of the Court of Appeals in construing the congressional intent behind 18 U.S.C. §922(a)(6) and allowing it to be applied to a purely intrastate transaction was clearly contrary to the interpretation given a similar statute in *U. S.* v. *Bass,* 404 U. S. 336, where the Court required an interstate nexus to be proven to give the United States Government jurisdiction.

In *Bass* the Court stated when dealing with another part of the firearms law:

BLEED THROUGH POOR COPY

> "As this Court emphasized only last term in *Rewis* v. *United States, supra,* we will not be quick to assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction. In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision."

In *Bass* the Court recognized the states present statutes of control in the area of firearms. Also that the Tenth Amendment gives all powers to the state unless enumerated by the Constitution to the Federal government. While the Tenth Amendment is not a repository of state powers, it does tend to restrict the areas of conflict to entry only by congressional mandate rather than pure court interpretation.

A look at the legislative history behind Title 18 U.S.C. §922(a)(6) makes the point clearer. Congress indicated expressly which subsections of the act were to apply to intrastate transactions. For example above 18 U.S.C. §922(b) in the legislative history it states, "Contains prohibitions applicable only to licensees—the prohibitions go to intrastate as well as interstate transactions by licensees." No such provision for intrastate transactions is made above 18 U.S.C. §922(a), indicating that it should only be applied to interstate transactions (Appendix C.)

The conference committee's reports indicate that the matter of the Federal Government going into intrastate gun control had long been an emotional battle.

The final Senate Amendment specifically stated, "To provide for better control of the interstate traffic in firearms." 114 Cong. Rec. 30,568 (daily ed. Oct. 10, 1968).

In speaking to the Senate on this subject, Senator Hruska stated:

> "Mr. President, I might say further that the real issue which was properly and justifiably denied in this body as well as the other body was that of Federal registration or licensing of guns and gun owners. That issue this body met four-square. There were four attempts and four variations of that effort and each one of them was decisively turned down as it should have been.
>
> "In the House of Representatives, that concept was turned down by a ratio of almost two to one. I think that fairly and squarely reflects the sentiment of the American people. They are not ready for that type of Federal regulation and control. If anything is to be done in that direction, it should be done by the municipalities and the states which are capable of enforcement of that kind of law."

From these statements it is obvious that this law was not intended to cover or license firearms only in intrastate transactions. Throughout the other subsections of Section 922 it mentions interstate expressly where Congress meant interstate (Appendix C).

The statute is a criminal statute and must be strictly construed. In construing the penal statutes strictly one is not to be subjected to a criminal penalty unless the words of the statute plainly impose it. *U. S.* v. *Campos-Serrano,* 404 U. S. 293.

BLEED THROUGH POOR COPY

2.) The Court of Appeals in affirming the judgment clearly deprived the Defendant of his protection against illegal searches and seizures.

The exclusionary rule has long been established to prevent the introduction of evidence which was improperly obtained. The 'fruit of the poisonous tree' doctrine which arose from the landmark case of *Wong Sun* v. *United States,* 371 U. S. 471, would clearly exclude the evidence used against the Defendant in this case. Since the testimony of agent Johnston clearly arose from and was the result of an arrest which was later found to be illegal, the testimony given by said agent should have been excluded. It was clearly poisonous fruit and the arrest was found to be invalid by the Court for the Southern District of Indiana. Yet the indictment for the separate offense in Kentucky was entirely based upon the illegal Indiana arrest.

3.) By admitting the testimony of an Alcohol, Tobacco and Firearms agent to prove that the Dealer concerned in this instance was in possession of a proper license was a clear error by the Court. The Court of Appeals tries to equate the testimony of said agent with that of a keeper of the records. The two are not equal. Under the Fifth Amendment of the United States Constitution we are guaranteed a right to be confronted by our accusers and the evidence against us. This right was denied to the Defendant at his trial.

In *Shreve* v. *United States,* the Court of Appeals for the Ninth Circuit set forth specific requirements for the Best Evidence Rule.

> "The Best Evidence Rule means simply, that the best evidence in the power of a party to furnish

> must be produced. Before substituted evidence may be used, it must be made to appear that the party is unable to produce primary evidence, either through loss, or otherwise. Secondary evidence of the contents of a writing may be introduced, ordinarily, upon a sufficient showing, to the satisfaction of the Court, of the existence of the original and the fact that is unavailable to the party" 103 F. 2d 796.

No showing was made at the trial that the document itself could not be produced. The defense objected to the admission of the secondary evidence which was so vague he had no actual right to cross-examine it. The elements of the crime itself require a purchase from a "licensed dealer."

The Court of Appeals felt that the Agent's testimony was similar to that of a custodian. Yet the Sixth Circuit, itself, has held that a custodian could only testify where a "Mass" of records was concerned. *Pen-Ken Gas and Oil Corp.* v. *Warfield Natural Gas Co.*, 137 F. 2d 871, at 881. *Pen Ken* was a civil case. Surely the rule for a criminal case must be at least as much if not more stringent.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

DON H. MAJOR
MULHALL, MAJOR & TURNER
310 West Liberty Street, Suite 200
Louisville, Kentucky 40202

Attorneys for Petitioner

APPENDIX A

No. 72-1484

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. RONALD LEE CASSITY, *Defendant-Appellant.*	APPEAL from the United States District Court for the Western District of Kentucky.

Decided and Filed December 28, 1972.

Before WEICK, CELEBREZZE and LIVELY, Circuit Judges.

PER CURIAM. The defendant appeals his jury conviction for violation of 18 U.S.C. § 922 (a) (6)[1], the charge being that in connection with the purchase of a pistol he knowingly made a false statement that he had never been convicted of a felony. He makes three assignments of error, and we have considered each of them carefully.

[1] 18 U.S.C. § 922. Unlawful acts

(a) It shall be unlawful —

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

Appellant first contends that the District Court should have ganted his motion for a directed verdict because the Government failed to allege and prove that the pistol in question had been moving in interstate commerce. Section 922 (a) (6) does not contain any reference to interstate commerce and a study of the legislative history of the statute indicates that it was the intention of Congress to reach all transactions with licensed dealers, intrastate as well as interstate. This section of the Firearms Act has been considered by several Circuits and we adopt the construction which holds that any transaction with a licensed dealer involving a violation of § 922 (a) (6) itself affects interstate commerce and there is no requirement that the particular firearm in question be one which has moved in interstate commerce. *United States* v. *Menna*, 451 F. 2d 982 (9th Cir. 1971), *cert. denied* 405 U. S. 963 (1972); *United States* v. *Crandall*, 453 F. 2d 1216 (1st Cir. 1972); *United States* v. *Nelson*, 458 F. 2d 556 (5th Cir. 1972); *Cody* v. *United States*, 460 F. 2d 34 (8th Cir. 1972).

Appellant also complains that the prosecution never produced the actual license of the dealer from whom he purchased the weapon, and that the "best evidence rule" required that it be produced. A Special Investigator with the Alcohol, Tobacco and Firearms Division of the U. S. Treasury Department testified, inter alia, that he had examined the Federal firearms license of the dealer and that it was current and proper for the type of business being conducted. There is no contention that the dealer was not in fact licensed, but the complaint is that oral testimony concerning the license should not be substituted for the license itself. *Pen-Gas Gas & Oil Corporation* v. *Warfield Natural Gas Company*, 137 F. 2d 871 (6th Cir. 1943), is cited in support of this position. That was a civil action in which a private citizen testified to the contents of certain public records and it was held that the information should

have been related by the custodian of the records. The testimony of Special Investigator Johnston whose duties included checking firearms licenses would seem to satisfy such a requirement.

The third issue presented for review was whether the Special Investigator should have been permitted to testify concerning the purchase of the gun since his knowledge was derived from an interview with the defendant while he was in custody for a charge which was later dismissed because it was based on an illegal search. The defendant had been arrested in Indiana on October 3, 1971 for carrying a concealed deadly weapon and was released on bail and he was subsequently charged with a violation of the statute which makes it an offense for one who has been convicted of a felony to knowingly receive or possess a firearm.[2] The pistol taken from him in connection with his Indiana arrest was the same one, the acquisition of which was the basis of the charge in the present case.

On October 29, 1971 Special Investigator Johnston interviewed Cassity, after a full *Miranda* warning and learned where the weapon had been purchased. Further investigation revealed the fact that the defendant had falsely answered one or more of the questions required to be answered in connection with such a purchase. Cassity maintains that the evidence which led the investigator to the dealer was initially tainted and that Johnston should not have been permitted to testify concerning the transaction between Cassity and the dealer. He relies principally on *Wong Sun* v. *United States,* 371 U. S. 471 (1963). In that case the Court condemned verbal evidence which derived *immediately* from an unlawful entry and unauthorized arrest (371 U. S. at page 485). However, with respect to statements made voluntarily following lawful arraignment and release on recognizance the connection between the law-

[2] 18 U.S.C. § 1202 (a).

less police activity and discovery of the challenged evidence had "become so attenuated as to dissipate the taint", citing *Nardone* v. *United States,* 308 U. S. 338, 341. We hold that the lapse of twenty-six days between defendant's arrest and the interview with the investigator, coupled with the Constitutionally mandated warning, was sufficient to remove the taint of illegal arrest and render the testimony of the witness competent.

It should be pointed out that the defendant failed to comply with Rule 41(e) of the Federal Rules of Criminal Procedure in that no motion to suppress the testimony of Johnston was made before the trial. It was first made in his motion for a new trial. While noting this fact, the District Court nevertheless considered the motion and denied it on its merits.

We find no error in this record and the judgment of the District Court is affirmed.

BLEED THROUGH POOR COPY

APPENDIX B

---

§ 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm or ammunition to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b) (3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, or licensed dealer for the sole purpose of repair or customizing;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of sec-

tion 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from trasporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a rifle or shotgun obtained in conformity with the provisions of subsection (b) (3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate, or foreign commerce any destructive device, machinegun(as defined in section 5845 of the Internal Revenue Code of 1954), short-

BLEED THROUGH POOR COPY

barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity); except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes; and

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

* * * * * * *

APPENDIX C

**(1397 U. S. Code & Administrative News
90th Cong., 2d Sess.)**

GUN CONTROL ACT OF 1968

For Legislative History of Act, see p. 4410

PUBLIC LAW 90-618; 82 STAT. 1213

[H. R. 17735]

An Act to amend title 18, United States Code, to provide for better control of the interstate traffic in firearms.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Gun Control Act of 1968".

TITLE I—STATE FIREARMS CONTROL ASSISTANCE

PURPOSE

Sec. 101. The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eleminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reason-

ably necessary to implement and effectuate the provisions of this title.

Sec. 102. Chapter 44 of title 18, United States Code,[77] is amended to read as follows:

"Chapter 44.—Firearms

"Sec.
"921. Definitions.
"922. Unlawful acts.
"923. Licensing.
"924. Penalties.
"925. Exceptions: Relief from disabilities.
"926. Rules and regulations.
"927. Effect on State law.
"928. Separability clause.

"§ 921. Definitions

"(a) As used in this chapter--

"(1) the term 'person' and the term 'whoever' include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

* * * * * * *

LEGISLATIVE HISTORY

Section 921(b) (2).—As noted under section 921(a) (4), this paragraph excludes certain devices from the definition of "destructive device." The devices excluded are those not designed or redesigned or used or intended for use as a weapon—e. g., construction tools using explosives when used for such purposes; those used solely for such purposes as signaling; shotguns other than those coming within the purview of the National Firearms Act; nonautomatic rifles suitable for big game hunting; surplus military weapons

[77] 18 U.S.C.A. § 921 et seq.

distributed under 10 U.S.C. 4684(2), 4685, and 4686, e.g., a piece of obsolete field artillery given to an American Legion post; or those devices which the Secretary finds will not likely be used as a weapon, e. g., a rocket used in a research project.

Section 921(b) (3).—This paragraph provides that certain commercial-type crimes shall not be included in the term "crime punishable by imprisonment for a term exceeding one year." This, one convicted, for example, of unfair trade practices, would not be restricted under those provisions of the chapter related to purchase or transportation of firearms by convicted felons. While the paragraph enumerates certain types of crimes which are excluded from the felony criteria, it also gives the Secretary authority to add similar types of crimes to the list. This provision is the same as existing law.

Section 922(a) contains prohibitions applicable to all persons as well as prohibitions applicable only to licensees

Section 922(a) (1).—This paragraph proscribes any person from engaging in the business of importing, manufacturing, or dealing in firearms or ammunition without a license. The prohibition goes to both an unlicensed person engaging in a firearms business and such a person who, in the course of that business, ships, transports, or receives, a firearm or ammunition in interstate or foreign commerce. Thus, the paragraph makes it clear that a license is required for an intrastate business as well as an interstate business. This provision is the same as existing law.

Section 922(a) (2).—This paragraph contains one of the principal measures of the act—the interstate shipment of any firearm or ammunition by a licensee to anyone other than another licensee is prohibited unless such shipment comes within one of the three exceptions stated. In effect,

the interstate mail-order shipments of firearms and ammunition would be banned so that State and local authorities may better exercise the controls they deem desirable over the acquisition and possession of such firearms. Exceptions to the overall prohibition are: (1) Licensees returning a repaired firearm or replacement firearm of the same kind to the person from whom received; (2) shipment of a firearm by mail to one entitled to receive it under 18 U.S.C. 1715; and (3) delivery by a licensee in the District of Columbia to a resident of the District of Columbia (this exception also applies to transactions in Puerto Rico and the possessions). Existing law is identical except that rifles and shotguns are not covered.

Section 922(a) (3).—This paragraph implements the prohibition in section 922(a) (2). Any person other than a licensee, would be prohibited from transporting or receiving in his State of residence any firearm purchased or otherwise obtained by him outside that State. The committee has amended this paragraph in two essential respects. First, a limited exemption is made for the transportation into or the receipt in the State of one's residence of a firearm acquired through inheritance in another State, if the purchase or possession of such firearm is lawful in the State of residence. Second, another exemption is made to complement the exemption to section 922(b) (3), made by the committee. This would permit a purchaser to transport into or receive in his State of residence a rifle or shotgun purchased by him in a State contiguous to his State of residence if such transaction is in conformity with the provisions of section 922(b) (3).

Section 922(a) (4).—This paragraph prohibits transportation of destructive devices and National Firearms Act weapons (gangster type) in interstate or foreign commerce by any person other than a licensee, except as authorized

by the Secretary as consistent with public safety and necessity. Existing law contains a comparable provision but does not include any standard.

Section 922(a) (5).—This paragraph is also designed to implement section 922(a) (2) by prohibiting any unlicensed person from transferring in any way a firearm to another unlicensed person who resides in another State. The committee amended this provision by making a limited exemption for transfers of firearms incident to a bequest or intestate succession.

Section 922(a) (6).—This paragraph prohibits the making of false statements or the use of any deceitful practice (both knowingly) by a person in connection with the acquisition or attempted acquisition of a firearm or ammunition from a licensee. To invoke the prohibition, the false statement or deceitful practice must be material to the lawfulness of the sale of the firearm or ammunition under the provisions of the chapter. The requirement that one [who] obtains a firearm or ammunition from a Federal licensee must properly identify himself is inherent in this prohibition. This is strengthened by the recordkeeping provisions of sections 922(b) (5) and 923(d). This provision is the same as existing law except that it also covers ammunition.

Section 922(b) contains prohibitions applicable only to licensees—These prohibitions go to intrastate, as well as interstate, transactions by licensees

Section 922(b (1).—The sale or delivery by a licensee of any firearm or ammunition, other than a shotgun or a rifle, or ammunition for a firearm other than a shotgun or a rifle, to anyone less than 21 years old is prohibited. The paragraph also prohibits the sale or delivery by a licensee of any shotgun or rifle, or ammunition for a shotgun or rifle, to anyone less than 18 years of age. The prohibitions

in this paragraph would usually apply to over-the-counter sales but also would apply in intrastate mail order sales. Existing law contains no comparable restrictions on a sale or delivery of a shotgun or rifle nor does it similarly restrict disposition of ammunition.

* * * * * * *

72-1092 FILE COPY

Supreme Court, U. S.
FILED
FEB 20 1973
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. ———

72-1092

RONALD LEE CASSITY - - - - Petitioner

versus

THE UNITED STATES OF AMERICA - Respondent

ADDENDUM TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

DAVID KAPLAN
DON H. MAJOR
MULHALL, MAJOR & TURNER
310 W. Liberty St., Suite 200
Louisville, Kentucky 40202

Attorneys for Petitioner

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 72-1484

UNITED STATES OF AMERICA, - - *Plaintiff-Appellee*

v.

RONALD LEE CASSITY, - - - *Defendant-Appellant*

ORDER

Before: WEICK, CELEBREZZE and LIVELY, Circuit Judges

The appellant has filed a petition for rehearing in this case and the court has considered said petition. Upon consideration the court is of the opinion that nothing has been presented in the petition for rehearing which was not considered in the original disposition of the case or would in any way change the decision of the court.

Therefore, the court being advised, it is Ordered that the petition for rehearing be and it hereby is denied.

Entered by Order of the Court:

(s) James A. Higgins
Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1092

RONALD LEE CASSITY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Following a jury trial in the United States District Court for the Western District of Kentucky petitioner was convicted of having knowingly made a false statement to a firearms dealer in connection with the purchase of a firearm in violation of 18 U.S.C. 922 (a)(6). He was sentenced to a term of four years' imprisonment. The court of appeals affirmed (Pet. App.).

The petitioner contends that the government was required to show that the firearm he purchased had moved in interstate commerce. There is nothing in Section 922(a)(6) imposing such a requirement. As the court below noted, the courts of appeals that have passed on this question consider it sufficient that any transactions with a licensed firearms dealer affects interstate commerce, irrespective of whether the particular firearm has moved in interstate commerce (Pet. App. 10).

Petitioner contends that the "best evidence rule" was violated by use of the oral testimony of a special investigator with the Treasury Department, instead of the dealer's license itself, in proving that the transaction involved a licensed dealer. That contention was properly rejected below. The duties of the special investigator included checking firearms licenses and so his oral statement that he had examined the dealer's firearms license and found it current and proper was admissible.

Petitioner's third issue—that the special investigator should not have been permitted to testify about the gun purchase because his information was received from petitioner while he was in custody on a charge that was later dismissed because it was based on an illegal search—is also without merit. The government's evidence showed that, after a full *Miranda* warning and approximately one month after the initial arrest and after lawful arraignment and release on recognizance, petitioner told the investigator where the firearm had been purchased (Tr. 54-57). This testimony was competent.

BLEED THROUGH POOR COPY

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1973 499381 610